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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,260	12/15/2003	Andre Reichmann	P/1281-118	5815
2352	7590	12/28/2004	EXAMINER	
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			PICKETT, JOHN G	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/737,260	REICHMANN, ANDRE
Examiner	Art Unit	
Gregory Pickett	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 15 December 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-11 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-11 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 15 December 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/15/03.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ .

5) Notice of Informal Patent Application (PTO-152)

6) Other: ____ .

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Nakata et al (US 4,736,838).

Nakata et al discloses a marker holder assembly including a housing 1 having four sidewalls and a bottom wall, and a tray 5 mounted within housing 1 at a distance from the bottom wall and having a plurality of openings 8. Depending on the type of cap and marker used, the tray of Nakata et al is capable of securing a cap by snap fit.

2. Claims 1, 2, 6, 7, 8, 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Hayduchok (US 5,163,549).

Regarding claim 1, Hayduchok discloses a marker holder assembly (Figure 16) with a housing (portion onto which fastening means 65b is attached) having four sidewalls and a bottom wall, and a tray 61 having a plurality of openings (see Figures 1-4) into which a cap of a marker is securable by a snap fit. Tray 61 is spaced a distance from the bottom wall by the thickness of fastening means 65b.

As to claim 2, Hayduchok discloses a hinged cover (portion onto which paper 72 is mounted).

As to claim 6, Hayduchok discloses markers 4a with nibs 4c and caps 4b.

As to claim 7, Hayduchok discloses a hinged cover (portion onto which paper 72 is mounted).

As to claim 8, Hayduchok discloses sidewalls with a height as claimed (see Figure 16).

As to claim 10, Hayduchok discloses tray 61 with four openings (see Figure 4).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-3, 6, 7, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayduchok (US 5,163,549) in view of Petit (US 5,630,508).

Regarding claims 1, 2, 6, and 7, Hayduchok discloses a tray 1 with a plurality of openings 2 into each of which a cap 4b of a marker 4a (each having a nib 4c) is securable by snap fit (see Figures 5-8). Hayduchok discloses the tray capable of transport in a pocket or purse (Col. 1, lines 14-20). Hayduchok also anticipates the placement of the tray within a separate container (see Figure 16). Tray 1 is a thin flat object (see Figure 1).

Petit discloses a housing 3 with a hinged closure 5 for holding thin, flat objects. The recognition of the need for protection of the markers when carried in a pocket or purse is within the knowledge generally available to one of ordinary skill in the art and easily discernable from Figure 1 of Hayduchok since the ends of the markers are exposed to the environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to place the individual tray of Hayduchok within the housing of Petit as suggested by Hayduchok in order to protect the markers when carried in the pocket or purse.

As to claim 3, Petit discloses detents 83 & 85.

As to claim 10, Hayduchok discloses four openings (see Figure 4).

4. Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayduchok-Petit as applied to claims 2 and 7 above, and further in view of Chouinard et al (US 2003/0111373 A1).

Hayduchok-Petit discloses the claimed invention except for the ridge member on the inner top surface of the cover.

Chouinard et al discloses ridge members 54 in the inner top surface of closure 28 used to contact the retained articles to ensure a positive retention of the articles (see paragraph [0023]). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the assembly of Hayduchok-Petit with ridge members as taught by Chouinard et al in order to ensure a positive retention of the articles.

5. Claims 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayduchok-Petit as applied to claim 1 above, and further in view of Mander et al (US 3,643,812).

Hayduchok-Petit discloses the claimed invention except for the braces and lips for the retention of the tray.

Mander et al discloses a housing 10 with integral vertical braces R and lips 17 used to secure the tray 11 to housing 10 (see Col. 1, lines 41-45). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the housing of Hayduchok-Petit with integral braces and lips as taught by Mander et al in order to separably yet firmly secure the tray to the housing.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 9:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gpp
Greg Pickett
Examiner
22 December 2004

Mickey Yu
Mickey Yu
Supervisory Patent Examiner
Group 3700